

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: March 11, 2019; Ruling No. 2019-4877; Agency: Department of Corrections; Outcome: Grievant in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Equal Employment and Dispute Resolution

COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2019-4877
March 11, 2019

The Department of Corrections (the “agency”) has requested a compliance ruling from the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management in relation to the grievant’s October 31, 2018 grievance. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding his grievance.

FACTS

On or about October 31, 2018, the grievant initiated a grievance with the agency.¹ The agency states that the second step response was mailed to the grievant on November 8. Having received no further response from the grievant indicating whether he wished to advance or conclude the grievance, the agency sent, via U.S. Mail, a notice of noncompliance on November 28, 2018.² In its notice of noncompliance, the agency requested a response from the grievant within five workdays of his receipt of the notice. Since more than five workdays have elapsed since the grievant presumably received notice of his alleged noncompliance and he has not yet advanced or concluded his grievance, the agency seeks a compliance ruling allowing it to administratively close the grievance. During EEDR’s consideration of the ruling request, the grievant sent an e-mail response indicating his intent to proceed with the grievance.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.³ That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without EEDR’s involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.⁴ If the opposing party fails to correct the noncompliance within this five-day period, the party claiming

¹ While the grievance is dated October 26, 2018, it appears that it was received by the agency on October 31. The date of initiation has no bearing on the issues addressed in this ruling.

² The mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee. *E.g.*, *Washington v. Anderson*, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988).

³ *Grievance Procedure Manual* § 6.3.

⁴ *See id.*

noncompliance may seek a compliance ruling from EEDR, who may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When an EEDR ruling finds that either party to a grievance is in noncompliance, the ruling will (i) order the noncomplying party to correct its noncompliance within a specified time period, and (ii) provide that if the noncompliance is not timely corrected, a decision in favor of the other party will be rendered on any qualifiable issue, unless the noncomplying party can show just cause for the delay in conforming to EEDR's order.⁵

In this case, the grievant appears to have failed to advance or conclude his grievance within five workdays of receiving the agency's second resolution step response, as required by the grievance procedure.⁶ However, the grievant has now notified the agency that he wishes to proceed with the grievance. Accordingly, the basis for the agency's compliance request now appears moot.

If it has not already occurred, the grievance should be directed to the third step-respondent for an appropriate grievance response. If either party has any further questions, please contact EEDR's AdviceLine at 1-888-232-3842.

EEDR's rulings on matters of compliance are final and nonappealable.⁷



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⁵ While in cases of substantial noncompliance with procedural rules the grievance statutes grant EEDR the authority to render a decision on a qualifiable issue against a noncompliant party, EEDR favors having grievances decided on the merits rather than procedural violations. Thus, EEDR will *typically* order noncompliance corrected before rendering a decision against a noncompliant party. However, where a party's noncompliance appears driven by bad faith or a gross disregard of the grievance procedure, EEDR will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

⁶ See *Grievance Procedure Manual* § 3.2.

⁷ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).